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Attorneys for Defendant,  
BARCLAYS CAPITAL REAL ESTATE, INC.  
dba HOMEQ SERVICING,  
erroneously sued herein as HOMEQ SERVICING INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JOHN ALLEN,  
Plaintiff,

v.

HOMEQ SERVICING INC.,  
Defendant.

**Case No.: 3:08-cv-03798-JL**

**[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS SECOND  
AMENDED COMPLAINT**

**[F.R.C.P. 12(b)(6)]**

**Hearing Date: September 24, 2008  
Hearing Time: 9:30 a.m.  
Place: Courtroom F, 15<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102**

Defendant's Motion to Dismiss portions of Plaintiff's Second Amended Complaint came before this Court for hearing September 24, 2008. Upon consideration of all written submissions and oral argument, the Court GRANTS Defendant's Motion to Dismiss with prejudice.

The Court grants the motion on the following bases:

**ORDER RE: MOTION TO DISMISS**

1. Plaintiff fails to state a claim of relief for negligent interference with prospective economic advantage. The complaint does not allege any actual business or economic relationship, nor does it allege any economic relationship with the owner of the property. Further, Plaintiff does not and cannot allege Homeq knew of his purported business relationship. These are necessary elements of a claim for negligent interference with prospective economic advantage. *North American Chemical Co. v. Superior Court*, 59 Cal. App. 4th 764, 786 (1997); see also *Youst v. Longo*, 43 Cal. 3d 64, 71 n.6 (1987).

Plaintiff has already been given leave to amend to cure these deficiencies, but was unable to do so. Dismissal with prejudice is therefore warranted.

For the foregoing reasons, Defendant's motion to dismiss is GRANTED, and Plaintiff's first claim for relief is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
James Larson  
United States Magistrate Judge

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 9970 Research Drive, Irvine, California 92618.

On August 15, 2008, I served the following document described as:

**[PROPOSED] ORDER GRANTING MOTION TO DISMISS SECOND AMENDED COMPLAINT**

On the following interested parties in this action:

Shawn Ridgell  
RIDGELL & LAWLOR LLP  
2128 Broadway  
Oakland, CA 94612  
(510) 986-1300  
*Attorneys for Plaintiff*

**[X]** VIA MAIL -- By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on the date following ordinary business practices. I am readily familiar with my firm's business practice and collection and processing of mail with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Irvine, California, with postage thereon fully prepaid that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on August 15, 2008, at Irvine, California.

/s/ Sherie Cleeré  
Sherie L. Cleeré